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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re S. P. et al., Persons Coming Under the Juvenile Court Law.	C088036
SHASTA COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. P. P. et al., Defendants and Appellants.	(Super. Ct. Nos. 16JVSQ3080301, 16JVSQ3080401, 16JVSQ3080501, 16JVSQ3080601, 16JVSQ3080701, 16JVSQ3080801)

Crystal H. (mother) and Patrick P. (father) appeal from the juvenile court's order terminating their parental rights and choosing adoption as the permanent plan for minors

Sha. P., Shi. P., Sta. P., Si. P., Ste. P., and Sa. P.[1] (Welf. & Inst. Code,[2] § 366.26.) They contend that insufficient evidence supports the trial court's finding the minors were adoptable. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 20, 2016, Shasta County Health and Human Services Agency (the agency) filed a section 300 petition as to all the minors (including the half siblings). As relevant to this appeal, the petition alleged that Sha. (11 years old), Shi. (nine years old), Sta. (seven years old), Si. (six years old), Ste. (five years old), and Sa. (two years old) were in danger due to unsafe conditions in the family home, the parents' inability to meet the minors' special and medical needs, and domestic violence between the parents.

The jurisdiction report stated that all but the youngest of the minors who are the subject of this appeal had disabilities that required individual education programs. Sha. had a specific learning disability and a speech and language impairment; Shi. had an intellectual disability and a seizure disorder; Sta. had an intellectual disability; and Ste. and Si. had speech and language impairments.

The disposition report stated that the four oldest minors were residing with the paternal uncle and aunt, whose home was being assessed for placement by the county licensing department. Ste. and Sa. were in a different home, but if the county approved the paternal uncle and aunt's home, placing Ste. and Sa. there would be considered. The minors were closely bonded and those old enough to communicate indicated that they wanted to live together.

Shi., Sta., and Ste. were reported to be autistic. They had been provided services through Far Northern Regional Center, but the parents' lack of participation had

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[1] The juvenile court also terminated parental rights as to the minors' younger half siblings who are not involved in this appeal.

[2] Undesignated statutory references are to the Welfare and Institutions Code.

sometimes caused those services to be interrupted. Shi. and Sta. had recently been moved to the paternal uncle and aunt's home after being removed from a foster family due to disruptive behavior.

Mental health and counseling services were being arranged for Sha., Shi., Sta., and Si., Ste., and Sa. did not appear in need of such services at this time.

The report recommended reunification services for the parents.

At the disposition hearing on December 13, 2016, the juvenile court ordered out-of-home placement for the minors involved in this appeal (all placed with the paternal uncle and aunt as of December 1, 2016), and granted reunification services to the parents.

The six-month review report recommended terminating the parents' reunification services for insufficient progress in their programs and scheduling a section 366.26 hearing within 120 days.

All the minors involved in this appeal remained in the home of the paternal uncle and aunt, which was a concurrent placement. They appeared skilled at meeting the minors' individual needs and at giving them the structure they had not had before. The paternal uncle and aunt were committed to the minors, open to all supportive services, and in regular communication with the social worker and the minors' therapists.

The minors were making great progress socially and each was improving in reading and language skills; they attended school consistently and looked forward to going. Their conduct toward each other had also improved greatly. However (except for Sa., the youngest, now in preschool), they were still performing below grade level and had developmental or educational problems for which individual education plans (IEP) had been created.

Sha., who was in fifth grade, placed at first-grade level in language arts and second-grade level in reading comprehension, but was improving swiftly. Shi., who was in fourth grade, suffered from autism, intellectual disability, a seizure disorder, intermittent toilet-training difficulties, and serious dental problems which one clinic had

refused to treat due to her behavioral issues; she was aggressive with her siblings, but not with her peers at school. Sta., who was in second grade, had an intellectual disability but was not autistic; she was improving substantially in her behavior and in meeting her IEP goals. Si., who was in first grade, had a specific learning disability and speech and language impairment, but was also making social and academic progress. Ste., who was in kindergarten, was now functioning at grade level, though she still had articulation difficulties and was doing well socially.

After multiple continuances, the six-month review hearing occurred on September 20, 2017. The juvenile court extended the parents' services to 12 months. The 12-month review report, filed December 4, 2017, again recommended terminating reunification services and setting the matter for a section 366.26 hearing. All six minors were still in the home of the paternal uncle and aunt, who reported no concerns about their capacity to meet the minors' needs and to implement structure for them. The minors continued to do well in their placement.

At the 12-month review hearing on January 18, 2018, the juvenile court adopted the agency's recommendations.

The section 366.26 report, filed May 1, 2018, recommended the termination of parental rights and adoption as to all six minors.

The paternal uncle and aunt had indicated a strong desire to adopt all of the minors. Their home, already an approved relative placement, was proposed as a permanent adoptive placement once they had achieved the status of a "Resource Family Approval Home," which was expected by the end of 2018. They had had a lifelong relationship with the minors, all of whom had been placed with them by the end of 2016. Their home was a three-bedroom, two-bathroom house with a fenced yard and numerous animals; the family enjoyed outdoor activities and other common interests. The paternal uncle and aunt reported no substance abuse, psychiatric illness, serious health issues,

criminal history, or child abuse history. The minors were "thriving in this loving and nurturing relative environment."

An adoption social worker had conducted an adoption assessment with the paternal uncle and aunt in April 2018 and had reviewed the case records.[3] All of the minors had expressed the desire to remain in the paternal uncle and aunt's home and expressed an "age appropriate understanding of adoption and termination of parental rights."

Sha., now in seventh grade, still had an IEP and received counseling services. He tended to be sensitive and emotional and had a hard time making friends at school, preferring to watch TV or play video games.

Shi., now in fifth grade, still had an IEP; due to her intellectual disability, she was placed in a special day class at school. She was still diagnosed with autism and seizure disorder. She was fully toilet-trained but unable to take care of her own personal grooming and hygiene. She sometimes had tantrums and picked on her younger siblings. She did not like to socialize with other children but would interact with adults.

Sta., now in third grade, still had an IEP. She also had an intellectual disability and was placed in a special day class at school. She had been diagnosed with pervasive developmental disorder and juvenile idiopathic scoliosis. She was sometimes "sarcastic and bossy." She enjoyed coloring pictures and playing outside.

Si., now in second grade, had an IEP for a specific learning disability. She was a "sassy, feisty, and outspoken" child, whose behavior was typical for her age. She enjoyed coloring pictures, singing, dancing, and playing basketball.

Ste., now in first grade, no longer required an IEP. Her behavior was typical for her age.

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[3] The section 366.26 report did not attach a written adoption assessment report and there is no such report in the appellate record.

Sa., now in preschool, was developmentally on target.

Aside from Shi.'s seizure disorder, for which she was prescribed Depakote, the minors had no significant health problems.

Due to the size of the sibling group and the minors' significant developmental delays, they would not be considered generally adoptable. But because they were in a proposed adoptive home, placed with relatives who had a strong commitment to adoption, it was likely the minors would be adopted.

At the section 366.26 hearing, the parents argued for the beneficial parental relationship exception to adoption. They did not challenge the report's assessment that the minors were adoptable.

The juvenile court adopted the findings and recommended orders of the section 366.26 report.

DISCUSSION

Father, joined by mother, contends that there was not clear and convincing evidence to support the finding that the minors were likely to be adopted as a sibling group. We disagree.

Before the juvenile court may terminate parental rights and select adoption as the permanent plan for the minors, the court must find by clear and convincing evidence that it is likely the minors will be adopted. (§ 366.26, subd. (c)(1).) "A finding of adoptability requires 'clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time.' [Citation.] The question of adoptability usually focuses on whether the child's age, physical condition and emotional health make it difficult to find a person willing to adopt that child." (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1231.) If minors form a sibling set, as here, that showing must be made for the set, not merely for individual minors. (*Id*. at pp. 1233-1234.)

In some cases, a minor who might ordinarily be considered unadoptable "due to age, poor physical health, physical disability, or emotional instability" may be deemed

adoptable because a prospective adoptive family is willing to adopt the child. (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1408.) In such a case, "the focus is on the specific caregiver who is willing to adopt" (*In re J.W.* (2018) 26 Cal.App.5th 263, 267 (*J.W.*)), and " 'the analysis shifts from evaluating the characteristics of the child to whether there is any legal impediment to the prospective adoptive parent's adoption and whether he or she is able to meet the needs of the child.' " (*Id.* at p. 268.)

" 'Although a finding of adoptability must be supported by clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is " 'likely' " that the child will be adopted within a reasonable time. [Citations.] We review that finding only to determine whether there is evidence, contested or uncontested, from which a reasonable court could reach that conclusion. It is irrelevant that there may be evidence which would support a contrary conclusion.' " (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.)

The paternal uncle and aunt, with whom the minors have been living for almost two years, are committed to adopting the minors, who want to stay with them. The evidence shows that the paternal uncle and aunt understand and have met the minors' needs. Although the home has not yet been formally approved as an adoptive home, nothing in the record suggests it will not be. Thus, a reasonable court could easily conclude that it is likely the minors will be adopted within a reasonable time by the paternal uncle and aunt. " ' "[W]hen there is a prospective adoptive home in which the [minors are] already living, and the only indications are that, if matters continue, the [minors] will be adopted into that home, adoptability is established." ' " (*J.W.*, *supra*, 26 Cal.App.5th at p. 268.)

Father asserts there is an impediment to adoption because the paternal uncle and aunt's home has not yet obtained an approved adoptive home study. Not so. "Where there is no evidence of any specific legal impediments to completing the adoption process, parental rights may be terminated to a specifically adoptable child regardless of

whether a home study has been completed." (*In re Brandon T.*, *supra*, 164 Cal.App.4th at p. 1410; see also *In re Marina S.* (2005) 132 Cal.App.4th 158, 166.) The mere fact that the home has not yet been approved is not evidence of a specific legal impediment to adoption.

Father also asserts that there is no "indication that an investigation was made into the existence of any possible legal impediments to adoption." We disagree. The agency has been familiar with the prospective adoptive home for the duration of this case, and its accounts of the home have been consistently glowing. According to the section 366.26 report, the adoptions social worker's recent assessment of the home was in accord with the agency's view. The parents could have put on evidence of a possible legal impediment to adoption at the section 366.26 hearing, but did not do so. (See *In re Scott M.* (1993) 13 Cal.App.4th 839, 844.) Since the agency and the adoptions social worker had the duty to investigate possible legal impediments to adoption and did not report any, we must presume, absent record evidence to the contrary, that they did the required investigation and found nothing. (Evid. Code, § 664.) Father did not rebut this presumption with evidence below and cites none on appeal.

Father relies on several appellate decisions, all of which are distinguishable.

First, father cites *B.D.*, in which the appellate court reversed the finding that a sibling group was adoptable, in part because of their emotional problems and developmental delays. (*In re B.D.*, *supra*, 159 Cal.App.4th at pp. 1226, 1232-1234.) But there, the five-member sibling group had never been in a single placement together; none of them had ever been in a prospective adoptive home or had any previous relationship with a family that might be willing to adopt; the agency had not located a prospective adoptive home for any of them; and it could not say when or whether it would be able to do so. (*Id.* at pp. 1223, 1226, 1232-1234.) Furthermore, the oldest minor opposed adoption and wished to be reunited with his mother. (*Id.* at pp. 1222, 1225.) Although the present case also concerns a sibling group whose members have experienced

emotional problems and developmental delays, in all other material respects it could hardly be more different from *B.D.*

Father also cites *In re Jerome D.* (2000) 84 Cal.App.4th 1200, which is distinguishable on multiple grounds. The single minor in the case had been improperly assessed as generally adoptable, ignoring his serious physical disability and close relationship with his mother. Only the availability of a prospective adoptive parent supposedly made the minor adoptable, but the would-be adoptive parent's criminal and CPS history had not been assessed. Lastly, the minor wanted to go back to living with his mother. (*Id.* at pp. 1204-1207.) Here, the minors were found to be specifically adoptable by relatives with whom they have lived for a long time, there is no evidence that those relatives have any sort of disqualifying history, and the minors do not want to go back to their birth parents.

Finally, father cites *In re Jayson T.* (2002) 97 Cal.App.4th 75, which is procedurally as well as factually inapposite. The appellate court there had to decide whether it should take postjudgment evidence that an adoptive placement ordered at the time of the section 366. 26 hearing had failed after the hearing -- which, in turn, might call into question the adoptability finding made at the hearing. (*Jayson T.,* at p. 77.) Determining that the applicable standard was the child's best interest, the court considered the new evidence and remanded for an updated review hearing on adoptability. (*Id.* at p. 78.) The new evidence suggested that the minors, now in their fifth placement, suffered from "reactive attachment disorder," which might preclude bonding with any prospective adoptive parents. (*Id.* at pp. 81-83.) Here, by contrast, there is no evidence of any such problem with any of the minors, and the parents do not claim there is postjudgment evidence that could call the juvenile court's adoptability finding into question. What father calls "the very real possibility of a failed adoption due to the size of the sibling group and their extensive special needs" -- facts the court was well aware of when it ordered the termination of parental rights -- is sheer speculation.

The parents have failed to show that insufficient evidence supports the order terminating parental rights.

DISPOSITION

The order terminating parental rights is affirmed.

/s/
Robie, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Duarte, J.